

REMARKS

Applicants acknowledge receipt of the Examiner's Office Action dated August 5, 2008. Applicants note that claims 1-4, 6-8, 10-12, 14-16, 24-27, 30-32, 34-35, and 37-43 are pending, and that, despite apparent typographical errors to the contrary (*see* Office Action, pp. 1 and 4), it appears that claims 1-4, 6-8, 10-12, 14-16, 24-27, 30-32, 34-35, and 37-43 stand rejected.

Formalities

The specification has been amended as required by the Office Action. *See* Office Action, p. 2.

Rejections under 35 U.S.C. §112

Claims 39-43 stand rejected under 35 U.S.C. §112, first paragraph, as purportedly “failing to comply with the written description requirement” due to purported lack of support from the specification for the limitation requiring that

the first predetermined value is modified to avoid frequent receipt of the rate control signal due to the oscillation of the quantity of the data stored within the memory device around the first predetermined value.

*See* Office Action, p. 3. The Office Action argues that the specification fails “to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” *Id.* While the Office Action notes that the specification (at page 16) states that

[o]ne way to avoid frequently sending rate codes to fabric 202 due to q(t) oscillation around one of the programming quantities Q(1) through Q(n), is to dynamically modify the value Q(x) used for comparison with q(t) as the Q(x) threshold is crossed by q(t) from below,

the Office Action argues that the limitation of claims 39-43 is “different in scope.” *Id.*

Applicants traverse this rejection for at least the reason that the above quotation from the specification makes it clear that Applicants were in possession of at least one method for avoiding frequent receipt of the rate control signal due to the oscillation of the quantity of the data stored within the memory device (e.g.,  $q(t)$ ) around the first predetermined value (e.g.,  $Q(x)$ ) by modifying the first predetermined value (e.g.,  $Q(x)$ ). Thus, Applicants' specification has established that Applicants were in possession of the claimed invention, as would reasonably be conveyed to one skilled in the art.

Applicants respectfully submit that if the Examiner believes that the language of claims 39-43 is too broad in scope to be patentable, then the appropriate course of action would be for the Examiner to issue a rejection under §102 or §103 by pointing to a reference that is purported to teach the limitation at issue.

For at least these reasons, Applicants respectfully request the withdrawal of this rejection.

Rejection under 35 U.S.C. §103

Despite apparent typographical errors to the contrary, it appears that claims 1-4, 6-8, 10-12, 14-16, 24-27, 30-32, 34-35, and 37-43 stand rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Gorti et al., U.S. Publication No. 2003/0007452 ("Gorti"), in view of Kalkunte et al., U.S. Patent No. 6,118,761 ("Kalkunte"), and further in view of Bass, U.S. Patent No. 6,118,761 ("Bass"). See Office Action, p. 4. Applicants traverse this rejection for at least the reason that the cited sections of Gorti fail to teach a first data quantity representing a *quantity of data stored in a memory*.

Regarding independent claims 1, 10 and 24, the Office Action argues that ¶ [0038] of Gorti teaches the limitations of (1) generating a first data quantity value representing a quantity of data stored in the memory at a first point in time, and (2) comparing the first data quantity value to a first predetermined value. *See* Office Action, pp. 4 and 6. However, Gorti fails to even mention a data quantity that represents a quantity of data stored in any kind of memory. Instead ¶ [0038] Gorti mentions flow rates and bandwidths. While it is true that ¶ [0038] states that “excess bandwidth is determined to exist only if the output flow rate for queue 16 is less than or equal to a pre-determined threshold flowrate, R,” bandwidths and flow rates are not the same thing as a quantity of data stored in memory.

This is not surprising since it appears from the abstract of Gorti that the invention disclosed therein is directed to adjusting flow rates based upon the availability of excess bandwidth rather than the quantity of data stored in a memory.

Thus, for at least the reason that the cited sections of Gorti fail to even mention a data quantity representing a quantity of data stored in a memory, Applicants respectfully request the reconsideration and withdrawal of this rejection against independent claims 1, 10 and 24.

Since the remaining independent claims 30 and 31 similarly recite a data quantity representing a quantity of data stored in a memory and “are rejected [for] the same reason[s] [as c]laims 1-16, [and] 24-27” (*see* Office Action, p. 10), Applicants respectfully request the reconsideration and withdrawal of the rejection against all claims.

*Request for Detailed Information*

In the event that the Examiner disagrees with the above arguments or locates a new grounds for rejection, Applicants respectfully request that the Examiner explicitly identify at least the quantity taught in the relevant references that the Examiner takes to correspond to (1) the first data quantity representing a quantity of data stored in a memory, and (2) the first predetermined value. General references to entire paragraphs and/or large sections of a reference are generally not sufficient to enable the Applicants to fully understand the nature of the Examiner's rejection.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to Deposit Account 502306.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric A. Stephenson', with a long horizontal flourish extending to the right.

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